

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Nifty Home Products, Inc.

Plaintiff,

v.

Civil Action #: 04-4708 RHK/JS

Midwestern Home Products Inc.

Defendant.

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**COMPLAINT**

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Plaintiff Nifty Home Products, Inc. ("Nifty"), for its Complaint against Defendant  
Midwestern Home Products Company, Ltd., states and alleges as follows:

**PARTIES**

1. Plaintiff Nifty is a Minnesota corporation with its principal place of business in  
Braham, Minnesota. Nifty designs and sells a variety of cooking accessories.
2. Defendant Midwestern Home Products Inc., ("MHP") on information and belief,  
is a Delaware corporation doing business in Wilmington, Delaware.

**JURISDICTION AND VENUE**

3. This is a claim of patent infringement under 35 U.S.C. §§ 271 and 281-285, for  
unfair competition under the federal Lanham Act, 15 U.S.C. § 1125(a), and unfair competition  
under Minn. Stat. § 325d.44, subd. 1.
4. This Court has jurisdiction over the subject matter over Nifty's federal claims by  
virtue of 28 U.S.C. §§ 1331 and 1338(a) and (b). This Court also has supplemental jurisdiction  
over Nifty's state and common law claims by virtue of the provisions of 28 U.S.C. § 1367(a),  
because those claims are joined with and substantially relate to claims under the Lanham Act.

SCANNED

NOV 4 2004

1

U.S. DISTRICT COURT MPLO

**ORIGINAL**

5. This Court has personal jurisdiction over defendant MHP, as MHP has engaged in acts of patent infringement, trade dress infringement, trademark infringement, and unfair competition in the United States and in the District of Minnesota. Defendant MHP regularly does business in the state of Minnesota by distributing its products in Big Lots stores operating in the United States, including Minnesota. This chain of distribution set up by MHP allows Minnesota customers to purchase infringing products. Venue is proper under 28 U.S.C. §§ 1391(b) and 1400(b), as defendant MHP has committed acts of infringement and unfair competition in this District.

### **PATENT IN SUIT**

6. On or about January 6, 1992 Frank Tiemann filed an application for a design patent on a turkey lifter. On or about November 23, 1993, the United States Patent and Trademark Office duly granted U.S. Patent No. Des 341,523 ("the '523 Patent") on a "Foodstuff Cooking and Lifting Tool" to Mr. Tiemann. A copy of the '523 Patent is attached as Exhibit A to this Complaint.

7. As shown on its face, the '523 patent was initially assigned to Turkey-Lifter, Inc. In 1993, Mr. Tiemann changed the name of his company from T & L Turkey Lifter, Inc. to T & L Nifty Products Inc. Subsequently, Mr. Tiemann changed the name of T & L Nifty Products Inc. to Nifty Products Inc.

### **BACKGROUND**

8. Nifty has been selling the patented turkey lifter directly to consumers and wholesale to a variety of retailers since 1992. The patented turkey lifters have been marked with the '523 Patent number.

9. In the Fall of 2004, Mr. Tiemann became aware that MHP was offering for sale a turkey lifter which infringes the '523 Patent. The infringing turkey lifter is sold under the "Prestige Collection" trademark. Nifty purchased an infringing turkey lifter from the Big Lots store located at 200 Western Avenue, Faribault, Minnesota 55021. A pricing sticker affixed to the shrink wrap covering the infringing turkey lifter indicated that MHP was the distributor of the infringing turkey lifter. A true and correct copy of the pricing sticker is attached as Exhibit B to this Complaint.

10. The product label of the infringing turkey lifter is substantially and confusingly similar to the product label of the Nifty turkey Lifter. A photocopy of the Nifty turkey lifter's product label is attached as Exhibit C to this complaint. The Nifty product label shows a drawing turkey on the Nifty turkey lifter with the handles in an opened position; a drawing of a turkey in a roasting pan with the handles of the Nifty turkey lifter cross-hatched over the turkey; and, a drawing of a turkey being lifted from a roasting pan by the turkey lifter. The infringing turkey lifter's product label shows substantially similar drawings. A photocopy of the infringing turkey lifter's product label is attached as Exhibit D to this Complaint. The infringing turkey lifter's product label shows drawings of a turkey on the infringing turkey lifter with the handles in an open position; a turkey in a roasting pan with the handles of the infringing turkey lifter folded and resting upon the turkey, and the turkey being lifted from the roasting pan by the infringing turkey lifter.

11. The infringing turkey lifter uses a substandard non-stick coating that flakes off of the metal of the infringing turkey lifter. Such flakes could pose a health hazard if the paint or coating is cooked into the turkey and consumed by customers.

**COUNT I  
(PATENT INFRINGEMENT)**

12. The allegations of Paragraphs 1 to 11 of the Complaint are re-alleged and incorporated herein by reference.

13. MHP has infringed and continues to infringe the '523 Patent by offering to sell and selling in the United States, and importing into the United States, without authorization, turkey lifters that are substantially the same as the design illustrated and described in plaintiff's design patent. The resemblance between the patented Nifty Lifter and the MHP's unauthorized turkey lifter is such as to permit an ordinary observer to purchase the unauthorized turkey lifter supposing it to be the Nifty Lifter.

14. MHP's actions have caused, and will continue to cause, irreparable harm to Nifty unless enjoined.

14. MHP's infringement of the '523 Patent has been willful and deliberate, and undertaken despite knowledge of the '523 Patent.

**COUNT II**  
**(TRADE DRESS INFRINGEMENT – 15 U.S.C. § 1125(a))**

15. The allegations of Paragraphs 1 to 14 of the Complaint are re-alleged and incorporated herein by reference.

16. Nifty began to use nonfunctional elements of the Nifty Lifter's design, packaging, and labeling in 1992 as trade dress for its cooking accessories.

17. MHP has recently begun selling its unauthorized turkey lifter into the same markets which Nifty sells its turkey lifters. MHP's use of Nifty's trade dress is without Nifty's consent. The trade dress incorporated into the turkey lifter is inherently distinctive and has also acquired secondary meaning in the market. The design of MHP's unauthorized turkey lifters is

likely to cause confusion among ordinary purchasers as to the source of Nifty's and MHP's kitchen accessories.

18. MHP's actions have caused, and will continue to cause, irreparable harm to Nifty unless further enjoined.

**COUNT III  
(FALSE DESIGNATION OF ORIGIN – 15 U.S.C. § 1125(a))**

19. The allegations of Paragraphs 1 to 18 of the Complaint are re-alleged and incorporated herein by reference.

20. The packaging of the unauthorized MHP turkey lifter prominently displays a photograph of the patented Nifty turkey lifter, and has been pirated by MHP. MHP's commercial use of the photograph of the Nifty turkey lifter is likely to cause confusion as to the origin of MHP's turkey lifter.

21. The unauthorized use of the photograph of the Nifty turkey lifter is likely to cause confusion as to MHP's affiliation, connection or association with Nifty.

22. The unauthorized use of the photography of the Nifty turkey lifter is likely to confuse consumers into believing that Nifty endorses or approves of the unauthorized MHP turkey lifter.

23. MHP's actions have caused, and will continue to cause, irreparable harm to Nifty unless further enjoined.

**COUNT IV  
(UNFAIR COMPETITION)**

24. The allegations of Paragraphs 1 to 25 of the Complaint are re-alleged and incorporated herein by reference.

25. MHP is passing its goods off as those of Nifty.

26. MHP's actions constitute unfair competition in violation of the Lanham Act, the Minnesota Trade Practices Act, Minn. Stat. 325D.44, and common law.

27. MHP's acts of unfair competition and deceptive trade practices have been willful and deliberate.

28. MHP's actions have caused, and will continue to cause, irreparable harm to Nifty unless further enjoined.

WHEREFORE, plaintiff Nifty prays for judgment as follows:

- (a) In favor of Nifty and against MHP on all counts of the Complaint.
- (b) Preliminarily and permanently enjoining and restrain MHP, its officers, directors, agents, servants, employees, attorneys and all others acting under or through them, from directly infringing or inducing others to infringe United States Design Patent No. 341,523, or engaging in further acts of trade dress infringement, passing off and unfair competition.
- (c) Awarding Nifty damages under 35 U.S.C. §§ 284 and 289, including MHP's profits and treble damages for willful infringement.
- (d) Awarding Nifty defendant's profits, Nifty's actual damages, and the costs of the action, pursuant to 15 U.S.C. § 1117(a).
- (e) Increasing the amount of damages and/or profits awarded Nifty as appropriate pursuant to 15 U.S.C. § 1117(a).
- (f) Awarding Nifty all damages recoverable under Minnesota common law of unfair competition or under the Minnesota Deceptive Trade Practices Act.
- (g) Awarding Nifty's reasonable attorneys' fees, costs, expenses, and interest pursuant to 15 U.S.C. § 1117(a), 35 U.S.C. § 285 and other applicable law, including Minn. Stat. § 325D.45.

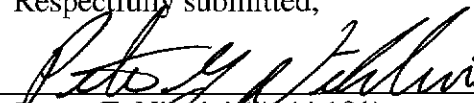
- (h) Awarding Nifty such other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury of all issues so triable.

Dated: Nov 3, 2004

Respectfully submitted,



James T. Nikolai (#144,101)

Peter G. Nikolai (#322,052)

NIKOLAI & MERSEREAU, P.A.

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820 International Centre

Minneapolis, MN 55402

Phone: (612)339-7461

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**Attorneys for Plaintiff**

**NIFTY HOME PRODUCTS,  
INC**



US00D341523S

# United States Patent [19]

Tiemann

[11] Patent Number: Des. 341,523

[45] Date of Patent: \*\* Nov. 23, 1993

## [54] FOODSTUFF COOKING AND LIFTING TOOL

[75] Inventor: Frank Tiemann, Circle Pines, Minn.

[73] Assignee: Turkey-Lifter, Inc., Circle Pines, Minn.

[\*\*] Term: 14 Years

[21] Appl. No.: 814,930

[22] Filed: Jan. 6, 1992

[52] U.S. Cl. .... D7/688; D7/409

[58] Field of Search .... D7/688, 409, 408; 99/426, 427; 211/181; 248/175; 126/337 R, 9 R

## [56] References Cited

## U.S. PATENT DOCUMENTS

2,514,098	7/1950	Shreiner	99/426
3,292,831	12/1966	Moen	99/426 X
4,200,040	4/1980	MacRae	99/426

4,718,402 1/1988 Fordyce ..... 99/426 X

Primary Examiner—Terry A. Pfeffer

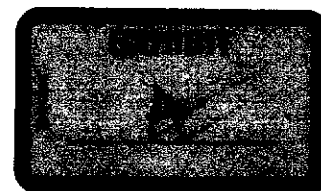
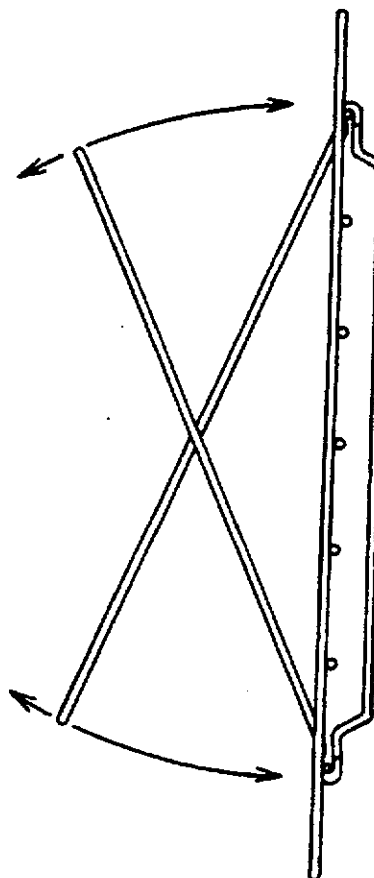
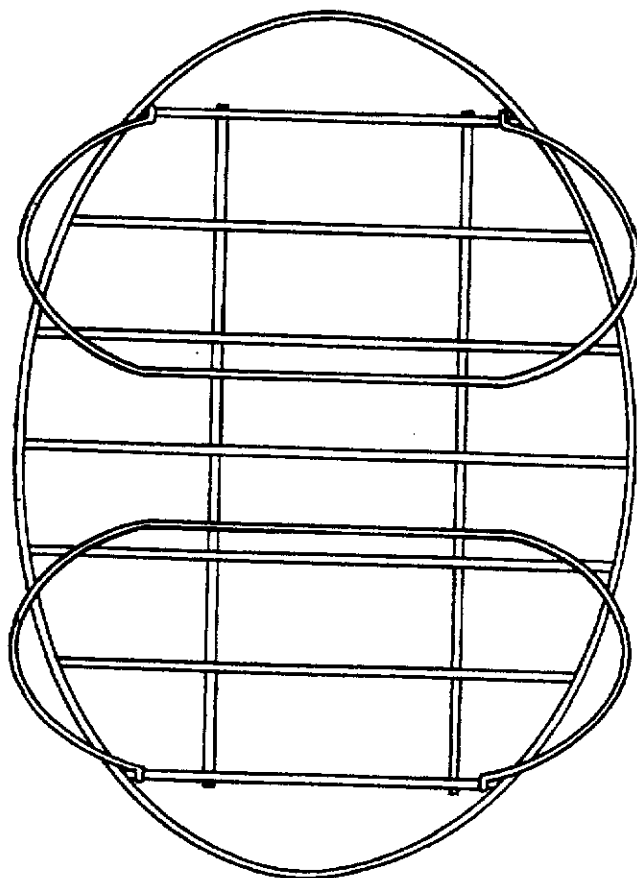
Attorney, Agent, or Firm—James R. Cwayna

## [57] CLAIM

The ornamental design for a foodstuff cooking and lifting tool, as shown and described.

## DESCRIPTION

FIG. 1 is a side elevational view of the foodstuff cooking and lifting tool showing my new design, the turkey shown in broken lines for illustrative purposes only; FIG. 2 is a side elevational view thereof in a closed position; FIG. 3 is a top plan view thereof in a partially folded position; FIG. 4 is a side elevational view thereof in a partially folded position; and, FIG. 5 is a front elevational view thereof in a fully upright position.





**U.S. Patent**

**Nov. 23, 1993**

**Sheet 1 of 2**

**Des. 341,523**

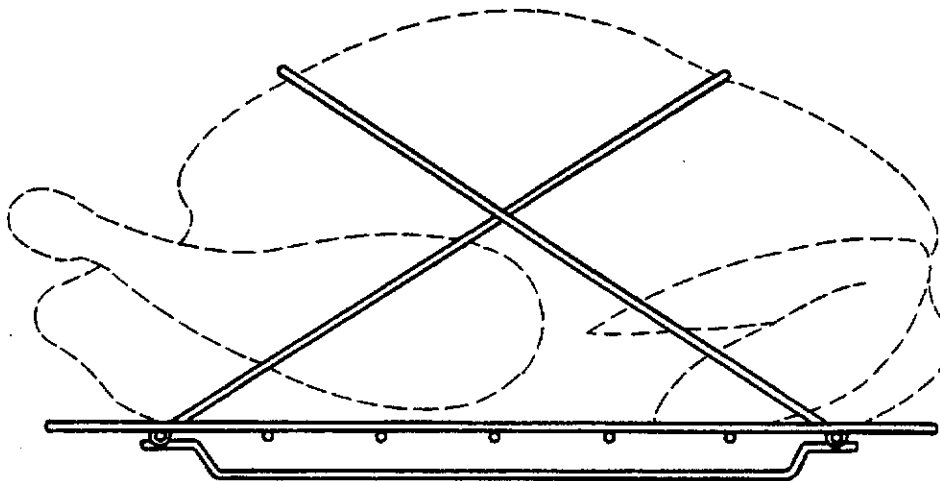


FIG. 1

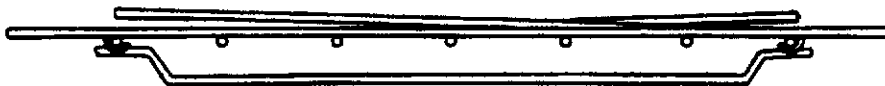


FIG. 2

**U.S. Patent**

**Nov. 23, 1993**

**Sheet 2 of 2**

**Des. 341,523**

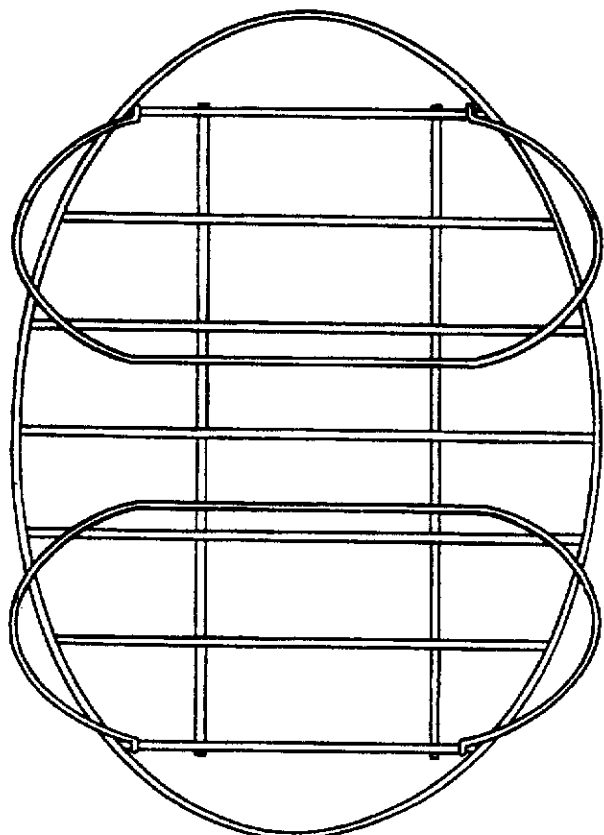


FIG. 3

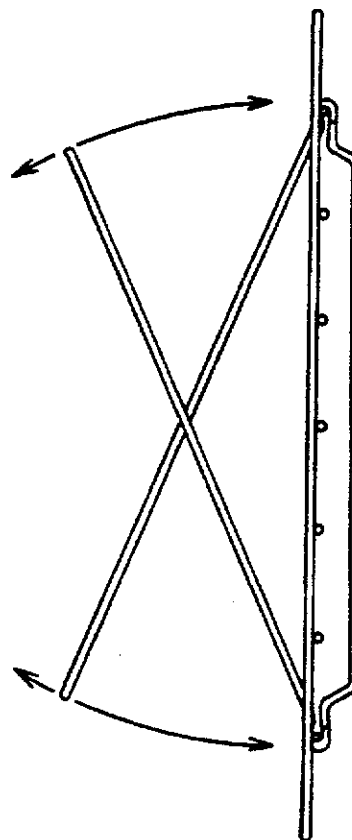


FIG. 4

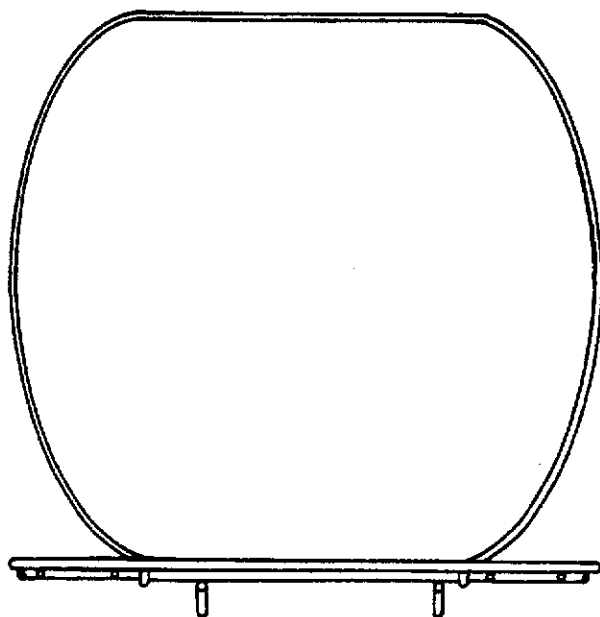


FIG. 5

PRESTIGE  
COLLECTION

Distributed By:  
Midwestern Home Products, Inc.  
P.O. Box 0591  
Wilmington, DE 19899  
V#274490  
MADE IN CHINA  
ITEM#240114-006

**BIG LOTS**  
**\$1.99**  
330 40 357  
144 330011200 1 094

Roaster

Perfect for roasting hams and whole roasted  
birds. The roaster is designed to plant  
the roasting rack in the roaster for  
easy removal and quick cleanup.

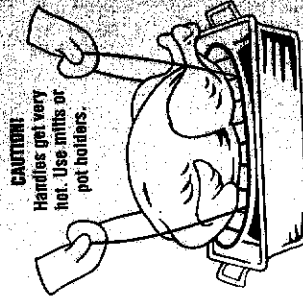
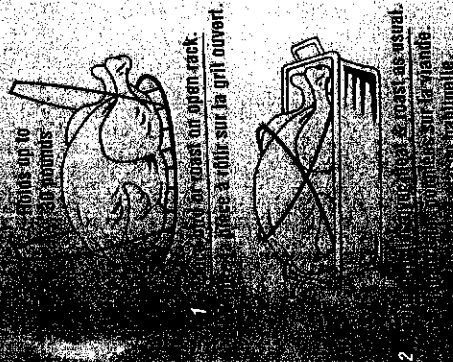


1. Insert handles and place bird or roast on rack.  
2. Insert handles and place in appropriate cooking pan.  
3. Push handles down until they rest upon roast or bird.  
4. Push handles to lift roast or bird out of pan.  
5. Handles get very hot. Use oven mitts or potholders.

EXHIBIT  
B

# The TURKEY LIFTER

Non-Stick



**CAUTION!**  
Handles get very hot. Use mitts or pot holders.

③ Open handles and lift out.  
Déplier les poignées et retirer la viande de la lèchefrite.

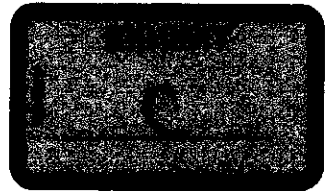
**ATTENTION!**  
Les poignées sont très chaudes, toujours se servir de maniques ou de gants isolants lorsqu'on manœuvre le grill.

The Roasting Rack That Puts A Handle On Your Roasting Problems.  
GREAT FOR • TURKEY • ROASTS • HAM • CHICKEN • GOOSE • DUCK

Le Grill Qui Met Fin Aux Problèmes de Rôtissage

Ideal Pour Les • DINDES • RÔTIS • JAMBONS • POULET • OIES • CANARDS

© 1993 The Products, Inc., Brenham, Minnesota. MODEL NO002. Patent Number DES-241,520.



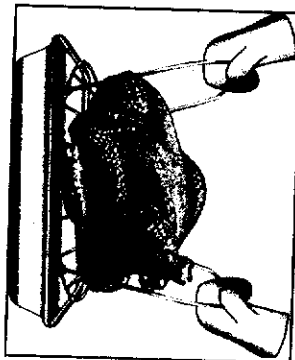
# PRESTIGE

C O L L E C T I O N T.M.

## Turkey Lifter

Easy way to move turkey, roasts, hams and whole roasted chickens from pan to platter!

- Holds up to 30 lb
- Non-stick coating for quick cleanup



### To Use:

1. Open handles and place bird or roast on rack.
  2. Lift by handles and place in appropriate cooking pan.
  3. Fold handles down until they rest upon roast or bird.
  3. Open handles to lift roast or bird out of pan.
- CAUTION: Handles get very hot. Use oven mitts or potholders.

LAW OFFICES

INTERNATIONAL CENTRE  
900 SECOND AVENUE SOUTH, SUITE 820  
MINNEAPOLIS, MINNESOTA 55402-3813  
TELEPHONE 612 339 7461  
FACSIMILE 612 349 6556

November 3, 2004

U.S. District Court for the District of Minnesota  
U.S. Courthouse, Suite 202  
300 South 4<sup>th</sup> St.  
Minneapolis, MN 55415

Re: Nifty Home Products, Inc. v. Midwestern Home Products Company, Ltd.

Dear Sir or Madam:

Enclosed for filing please find the following documents:

1. Summons and Complaint and Exhibits; and
2. A check in the amount of \$150.00 in the above captioned lawsuit.

Please date-stamp one (1) copy of the Summons and Complaint for our records.

If you have any questions related to the foregoing, please feel free to give me a call at (612) 339-7461.

Sincerely,

NIKOLAI & MERSEREAU, P.A.

  
Peter G. Nikolai

PGN/acn  
Enclosures

RECEIVED  
04 NOV - 3 PM 4:42  
CLERK U.S. DIST. COURT  
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